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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Single Bench

M. Tr. Pet. (Cri)

~~MISC. CRIMINAL CASE~~ NO. 05 OF 2006

IN THE MATTER OF:

4394/06

Filed on 09/10/06

by Shri Advocate

9/10/06 R & D.R.(J)

PETITIONER: SATISH JAGGI, Aged 30 years, S/o Late Ramavtar Jaggi, R/o Parishram Nahar Para, Raipur (C.G.)

VERSUS

RESPONDENTS: 1. STATE OF CHHATTISGARH Through Police Station, Moudhapara, Raipur (C.G.)

RECEIVED COPY 9/10/06 CLERK to A.G. BILASPUR

2. THE CENTRAL BUREAU OF INVESTIGATION (CBI), Lodhi Road, CGO Complex, New Delhi, NMDC, Rest House, Civil Lines, Raipur (C.G.).

3. AMIT JOGI, Aged 29 years, S/o Ajit Pramod Jogi, At present Residing at Sagoan Bunglow, Katora Talab, Raipur (C.G.) And all others in order sheets.

4. Chiman Singh, Son of Late Shri Home Singh, Resident of Jaggi Road, Mori Gaon, District Mori Gaon, Assam, Permanent R/o Shakuntla Bhawan, Ganj, District Bhind (M.P.).

NOTARY Ph.2223774 Feroze Hussain NOTARY (ADVOCATE) RAIPUR DISTRICT RAIPUR M.P., INDIA REGD. M.P. 27 13-3-96 GOVT. OF CHHATTISGARH

5. Yahya Dhebar, Son of Hazi Zikar Dhebar, Resident of Baijnath Para, Raipur (C.G.).

6. Abhay Goel, Son of Shri Rajeshwar Sharan Goel, Resident of B-34, Tagore Nagar, Raipur M. Chhattisgarh.

7. Shivender Singh Parihar, Son of Shri Kalyan Singh Parihar, Resident of Shiv Mandir, Power House Road, Near Amit Gas Agency, Bhilai (C.G.).

8. Firoz siddiqui, Son of K.U. Siddiqui, Resident of Cluster 10, House No.14, Kashiram Nagar, Raipur (C.G.).

9. Vikram Sharma, Son of Ramji Sharma, Resident of VPO Daboha, P.S. Bhind (Rural), District Bhind (M.P.).

10. Vinod Singh Rathore @ Phoope, Son of Shyambir Singh Rathore, Resident of LIG 176, Darpan Colony, Gwalior (M.P.).

11. Rakesh Kumar Sharma @ Baba, Son of Shri Totaram Sharma, Resident of IDPL, Bapu Gram, Rishikesh, District Dehradun (Uttaranchal).

12. Ashok Kumar Bhadoria @ Pintoo, Son of Shri Narendra Singh Bhadoria, Resident of Bajrang Colony, By Pass Road, P.S. Bhind (Rural), District Bhind (M.P.).

13. Sanjay Singh Khushwaha @ Chunnu, Son of Shri Keshav Singh Khushwaha, Resident of Ward No.24, Ashok Nagar, Jamna Road, Bhind (M.P.).

14. Raju Bhadoria, Son of Shri Jagdish Bhadoria, Resident of M/s Shivam Building Material, Baroli Road, Bhind (M.P.).

15. Ravi Singh Khushwaha, Son of Shri Nathu Singh Khushwaha, Resident of Village Nunhata, PS Umri, Bhind (M.P.).

16. Narsi Sharma, Son of Sita Ram Sharma, Resident of C/o Guljar Prasad Sharma, Ashok Nagar, Bye Pass Road, Bhind (M.P.).

17. Satender Singh Tomar, Son of Shri Lal Singh Tomar, Resident of Ashok Nagar, Jamna Road, Ward No.24 Bhind (M.P.).

18. Vivek Singh Bhadoria, Son of Shri Kanhai Singh Bhadoria, Resident

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of Dharam Nagar, Bye Pass Road, Bhind (M.P.).

19. Lalla Bhadoria, Son of Madan Singh Bhadoria, Resident of Village Kissoopura, Tahsil Ater, Bhind (M.P.).

20. Sunil Gupta, Son of Babu Lal Gupta, Resident of Meera Colony, Ward No.21, Bhind (M.P.).

21. Anil Pachauri @ Atloo, Son of Shri Radheshyam Pachauri, Resident of Meera Colony, Bhind (M.P.) and also C/o Shiv Kumar Pachauri, behind Jail, Bhind (M.P.).

22. Harish Chander, Son of Guljari Prasad, Resident of Ashok Nagar, Bye Pass Road, Opposite Police Line, Bhind (M.P.).

23. Surya Kant Tiwari, Son of Late Dilip Ram Tiwari, Resident of Lily Chowk, Purani Basti, Raipur (C.G.).

24. R.C. Trivedi, Son of Late Shri R.L. Trivedi, Resident of H.No.4, Civil Lines, Durg (C.G.).

25. V.K. Pandey, Son of Shri N.P. Pandey, Resident of Police Quarters, City Kotwali, Raipur (C.G.).

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26. Amrik Singh Gill, Son of Shri Sadu Gill, Resident of Udaya Society, Tatibandh, Raipur (C.G.).

27. Avinash Singh, Son of Shri Ranjeet Singh @ Ram Bhagat Singh, Resident of Village Mau Paraseen, District Azamgarh (U.P.).

28. Jamwoul Kashyap, S/o Jarmangal Kashyap, R/o Village Kajha, P.S. Ranipur, Tahsil Mohammadabad, District Mau (U.P.).

29. Shyam Sunder, S/o of Shahjad Sharma, R/o VPO Kajha, P.S. Ranipur, District Mau (U.P.).

30. Vinod Singh, S/o Jitendra Singh, R/o Village Mirjapur, P.O. Kajha, P.S. Benipur, District Mau (U.P.).

31. Vishwanath Rajbhar, S/o Jaishree Prasad, R/o Opp. Ram Kinkar Hospital, Near Lahar Chowk, Purnai Basti, Raipur (C.G.).

APPLICATION UNDER SECTION 407 OF THE CODE OF CRIMINAL PROCEDURE 1973 FOR THE TRANSFER OF SESSIONS TRAIL NO.329/05 IN THE CASE TITLED STATE OF CHHATTISGARH V/S AMIT JOGI AND OTHERS AND/OR FOR NECESSARY DIRECTIONS IN THE ENDS OF JUSTICE.

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आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

21.11.2006

On a mention being made, showing urgency by Shri B.P. Sharma, learned counsel for the petitioner, this matter is taken up for hearing out of turn.

Arguments on admission heard.

Order passed as follows:

ORDER

(21.11.2006)

Sunil Kumar Sinha, J,

(1) This is a petition filed u/s 407 of the Code of Criminal Procedure for transfer of Sessions Trial No.329/2005 (State through C.B.I –vs- Amit Jogi and 30 others) pending in the Court of Sessions Judge, Raipur (C.G). The petition has been filed by the complainant/first informant who happens to be the son of deceased.

(2) The brief facts are that one Ram Avtar Jaggi, a leader of Nationalist Congress Party was shot dead in Raipur on 04.06.2003 at about 11 p.m., and in this connection, a report was lodged by the petitioner vide F.I.R.No.105/2003 which was registered u/s 302 of the I.P.C. The matter was handed over to the C.B.I., and after due investigation, the C.B.I., filed charge sheet under sections 120-B, 302, 427 and 201/34 IPC and sections 25 & 27 of the Arms Act. After committal to the Court of Sessions on 08.9.2005, the learned Sessions Judge, Raipur, made over this case for trial to the Court of 3rd Additional Sessions Judge, Raipur. During the course

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of trial, the said Court recorded evidence of about 150 prosecution witnesses and about 53 witnesses were given up. Thereafter, a transfer petition was filed by the accused persons vide M.Cr.C.No.1796/2006 and by an order dated 21.6.2006, this Court directed for transfer of this case from the Court of 3rd Addl. Sessions Judge to the Court of Sessions Judge, Raipur and the proceedings of further trial commenced before the said Court. At that time, one Mr. R.S.Sharma, was the Sessions Judge, Raipur. It is stated that Mr. R.S.Sharma, examined 4 prosecution witnesses and he also examined 21 defence witnesses cited by the defence. Thereafter, by an administrative order, passed by the High Court, Shri Sharma was transferred from Raipur to Janjgir-Champa and Shri Sanman Singh, the present Sessions Judge, was transferred to the Sessions Division Raipur as the new District & Sessions Judge, before whom, the further proceedings of the trial commenced. It is stated that he also examined two more defence witnesses and as per information furnished by counsel for the petitioner, the trial is now at the stage of final decision.

(3) The petitioner has filed this petition mainly on the ground that Mr.Sanman Singh is the elder brother of one Gulab Singh, who is a sitting Congress (I) M.L.A., and Mr.Gulab Singh is very close to Mr.Ajit Pramod Jogi, the father of respondent no.3 (one of the accused persons) who also happens to be a sitting Member of Parliament belonging to the same party. It is pleaded vide para 6 of the petition that it is verily believed that Mr.Gulab Singh was

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and is very close to Mr.Ajit Pramod Jogi right from the time when the latter was the Chief Minister of the State, therefore, the petitioner has bonafide and genuine apprehension that he will not get justice if the trial of the aforesaid case is finally concluded by Mr. Sanman Singh as the Sessions Judge, Raipur. Along with the above main ground, the petitioner has also taken an additional ground that a great prejudice would be caused if a new judge, who had neither recorded the evidence of any of the prosecution witnesses examined by the C.B.I., during the trial nor had recorded the examination of the accused persons and about 20 defence witnesses (who were examined by Mr. R.S.Sharma), continues with the trial at such a belated stage. On these grounds the petitioner has prayed for transfer of this case from the Court of present sessions Judge, Raipur to the Court of Shri R.S. Sharma, the then Sessions Judge, who is presently posted as Sessions Judge, Janjgir-Champa, or to pass necessary orders directing Mr. R.S.Sharma, the Sessions Judge, Janjgir-Champa to conclude the above Sessions Trial by camping at Raipur for that purpose.

(4) At the arguments also, learned counsel for the petitioner raised almost similar points which have been pleaded by him in paras 6 & 7 of the transfer petition, referred to above.

(5) I have heard learned counsel for the petitioner at length and have also perused the records of the transfer petition.

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(6) Section 407 of Cr.P.C. provides power of High Court to transfer cases and appeals. Sub-section(1) of Section 407 provides that whenever it is made to appear to the High Court that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or that some question of law of unusual difficulty is likely to arise, or that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, then, it may order for transfer of the case as provided in second part of this sub-section.

(7) The law with regard to transfer of cases is well settled. The Apex Court held in the matter of ***Gurucharan Dass Chadha –Vs- State of Rajasthan, AIR 1966 S.C. 1418*** that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. The Apex Court said that a petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. The Apex Court further held that it is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. The Apex Court

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also said that to judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.

(8) It was further held by the Apex Court in the matter of ***Mrs. Maneka Sanjay Gandhi and another –vs- Miss Rani Jethmalani, AIR 1979 S.C. 468*** that assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievance. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. The Apex Court, in the facts and circumstances of the case, said that the grounds for the transfer have to be tested on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried. It further said that even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

(पीछे देखिये)

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(9) If we apply the above principles in the facts and circumstances of the present case, it would appear that the apprehension entertained by the petitioner is not only unfounded but is unreasonable. Though the petitioner has tried to build up the case for transfer, but from the grounds set forth by him, it cannot be inferred that he genuinely entertains an apprehension and it is reasonable in the circumstances alleged. In fact, the petitioner without quoting any instance for the same has tried to make a link between the politicians and has developed his own hypothesis that since the brother of the judge is a sitting M.L.A., he may be influenced through him by the father of the accused using his position.

(10) In the opinion of this Court, this apprehension is not reasonable and the same cannot be permitted to be taken as a ground for transfer of sessions case from the court of a senior judicial officer of the rank of Sessions Judge. The other ground taken by learned counsel for the petitioner about causing prejudice on account of earlier witnesses not being examined by the present Sessions Judge can also not be entertained because that is not a fact germane for transfer of a case u/s 407 Cr.P.C.

(11) Another circumstance which is quite appealing to me for not entertaining such a petition at this stage is that as per the informations submitted by counsel for the petitioner, the trial is at the final stage and about 150 prosecution witnesses and nearly all

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the defence witnesses have been examined and nothing remains to be done except hearing the arguments and passing the judgment and in such situation, there is no propriety in transferring the case on the grounds taken by the learned counsel for the petitioner. In this regard, I am fortified in my views by the judgment of the Apex Court rendered in the matter of ***Pal Singh and another –vs- Central Bureau of Investigation and others, (2005) 12 SCC 329***.

(12) In the opinion of this Court, there appears to be no ground for entertaining such a petition. The petition has no merits and the same is dismissed at the motion stage itself.

Sd/-
SUNIL KUMAR SINHA
Judge

Rao

(पीछे देखिये)

18/10/07 25.11.06 24.11.06